

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOEL SPIEGELMAN,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

23-CV-2345 (JPO)

05-CR-960 (JPO)

TRANSFER ORDER

J. PAUL OETKEN, United States District Judge:

Movant Joel Spiegelman, currently incarcerated at the Federal Medical Center in Rochester, Minnesota, brings this *pro se* action seeking permission to file a second or successive motion under 28 U.S.C. § 2255, challenging his judgment of conviction entered in *United States v. Spiegelman*, 05-CR-960, ECF No. 66 (S.D.N.Y. January 28, 2008).¹ Movant also filed a motion for the Court to request appointment of *pro bono* counsel. For the reason set forth below, the Court transfers this action to the United States Court of Appeals for the Second Circuit.

A movant seeking to file a second or successive § 2255 motion must first seek authorization from the appropriate court of appeals.. 28 U.S.C. § 2244(b)(3)(A). Movant must therefore submit his request to pursue a second or successive application to the United States Court of Appeals for the Second Circuit.²

¹ Movant previously challenged the same judgment of conviction under § 2255 in a prior action. *See* ECF 1:10-CV-7579, 22 (SAS) (S.D.N.Y. Aug. 21, 2012).

² Movant must demonstrate that a motion to the Court of Appeals is based on newly discovered evidence or a new rule of constitutional law made retroactive by the Supreme Court. *See* 28 U.S.C. § 2255(h).

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Movant. In the interest of justice, the Court transfers this motion under § 2255 to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *see also Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996) (*per curiam*). The motion requesting assignment of *pro bono* counsel is denied without prejudice. This order closes this case. If the Court of Appeals authorizes Movant to proceed with a second or successive motion, he shall move to reopen this case under this civil docket number.

As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: March 22, 2023
New York, New York



J. PAUL OETKEN
United States District Judge